

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) Case No. CR-10-188-R
)
DEAN LEROY FREERKSEN, III)
and ALICIA DANIELLE FREERKSEN,)
)
Defendants.)

**MOTION IN LIMINE RE: PENDING STATE CHARGES,
AND BRIEF IN SUPPORT**

Defendant, Dean Leroy Freerksen, III moves in limine and requests that the Government be prohibited from introducing evidence that Defendant is currently the subject of similar (in that they involve allegations of sexual and other impropriety with minors) state charges in Woodward County. In state court, Defendant is charged with first degree rape after former conviction of two or more felonies in Woodward County Case Nos. CF-2009-225, CF-2009-284, and CF-2009-311. Defendant is charged with furnishing alcohol to minors in Case Nos. CF-2009-315 and CF-2009-353. In Case No. CM-2009-418, Defendant is charged with furnishing low-point beer to minors.

Evidence of these charges is irrelevant to the material issues framed by the indictment. Evidence that Defendant is charged in state court with similar offenses does not tend to make more or less probable any fact of consequence in this case. Fed.R.Evid.

401, 402. This evidence could only diminish the presumption of innocence and create unfair prejudice against Mr. Freerksen. Fed.R.Evid. 403. Finally, this evidence is not admissible under Fed.R.Evid. 404(a), because it amounts to no more than "propensity" evidence or evidence of bad character. It is likewise inadmissible under Fed.R.Evid. 404(b), because the fact of charges alone does not come within any exception to the general rule prohibiting evidence of other crimes.¹

Accordingly, this motion should be sustained and the fact of other, similar pending charges in state court should be excluded from trial.

Respectfully submitted,

/s/ David Autry
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¹ The Government has not filed a notice of intent to introduce evidence of other crimes or bad acts pursuant to Fed.R.Evid. 404(b). Should it elect to do so, Defendant anticipates filing an additional motion to exclude that evidence.

Certificate of Electronic Filing and Service

This is to certify that on this 21st day of June, 2010, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing. A copy will be served electronically to Randal Sengel, AUSA 410 W. Park Avenue, Ste. 400, Oklahoma City, OK 73102 and Teresa Brown, Assistant Federal Defender, Old Post Office Building, 215 Dean A. McGee Avenue, Room 109, Oklahoma City, OK 73102. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/ David Autry